



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**The Honorable Thomas McClintock**  
**California Senate**  
**Capitol Office District Office**  
**State Capitol, Room 3070**  
**Sacramento, CA 95814**

**DEC 30 2008**

**RE: MUR 6010**

**Dear Mr. McClintock:**

On May 19, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On December 18, 2008, the Commission found, on the basis of the information in the complaint, and information provided by Partnership for America and McClintock for Congress, that there is no reason to believe that you violated 2 U.S.C. §§ 441i(e)(1)(A). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, are enclosed for your information.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Gura".

**Stephen A. Gura**  
**Deputy Associate General Counsel**  
**for Enforcement**

**Enclosures**  
**Factual and Legal Analysis**

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondent: Tom McClintock**

**MUR: 6010**

**I. INTRODUCTION**

This matter arises out of a complaint alleging that Tom McClintock violated the Federal Election Campaign Act of 1971, as amended ("the Act") by soliciting excessive and prohibited funds for Partnership for America. See Complaint at 2-4 and Exh. B.

Tom McClintock is a California state senator and the 2008 Republican nominee for the House of Representatives for California's Fourth Congressional District. Partnership for America is a nonprofit corporation organized under 26 U.S.C. § 501(c)(4) and headquartered in Colorado. It is "comprised of Americans who support public policies that seek to restore a common sense balance between economic growth and environmental conservation." See <http://www.partnershipforamerica.org>. The organization's stated goals are to create "environmentally sound development" and "access to affordable and reliable supplies of goods," and to boost "economic growth" through job creation. See <http://www.partnershipforamerica.org/about/whatwebelieve.asp>.

Specifically, the complaint alleges that, on or about April 22, 2008, Mr. McClintock, personally and through an his agent, an individual named Steven J. Ding, solicited excessive and prohibited contributions for Partnership for America's "independent expenditure" "campaign" at an Indian gaming tribes conference. See Complaint at 2-4 and Exh. B.

The complaint asserts that at the meeting,

- Mr. McClintock solicited campaign contributions for his authorized committee;

- 1 • "It is not known, but believed, that [Mr. McClintock] also solicited contributions  
2 for [Partnership for America];"
- 3 • Mr. Ding, as an agent of Mr. McClintock, solicited contributions for Partnership  
4 for America; and
- 5 • "It is not known, but believed, that [Mr. Ding] also solicited contributions for  
6 [Mr. McClintock's authorized committee]."

7 *Id.* at 4.

8 Mr. McClintock denies that he ever solicited funds for Partnership for America,  
9 that he is or was an agent of Partnership for America, or that Mr. Ding was his agent at  
10 the time of the Indian gaming tribes conference. *See* McClintock Response at 2.  
11 According to its response, the McClintock committee hired Mr. Ding to organize a  
12 fundraising trip to Washington, D.C., but severed all ties with him on April 9, 2008 and  
13 has not retained his services for any other purpose or at any subsequent time. *See id.*  
14 Although Mr. McClintock attended the Indian gaming conference and solicited funds for  
15 his authorized committee, the McClintock committee asserts that it properly disclosed all  
16 contributions solicited and received.<sup>1</sup> *See id.* at 3. Partnership for America similarly  
17 asserts that Mr. Ding is not an employee, agent, or representative of Partnership for  
18 America. *See* Partnership for America Response at 2.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002  
21 ("BCRA"), Federal officeholders and candidates for Federal office, or their agents, may  
22 not solicit, receive, direct, transfer or spend funds in connection with any election, unless  
23 the funds comply with Federal contribution limits, source restrictions, and reporting

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<sup>1</sup> Although MCC did not disclose any contributions from Indian tribes, its reports indicate that McClintock may have received individual contributions in response to his solicitations at the conference based on the date of receipt.

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1 requirements. 2 U.S.C. §§ 441i(e)(1)(A) and (B); 11 C.F.R. §§ 300.61 and 300.62.  
2 Specifically, a Federal officeholder or candidate, whether in connection with a Federal or  
3 non-Federal election, may not raise funds from individuals that exceed the current limit  
4 of \$2,300 per election per candidate, and may not raise funds from corporations, labor  
5 organizations, or foreign nationals. The Commission has defined the term “solicit” to  
6 mean “to ask that another person make a contribution, donation, transfer of funds, or  
7 otherwise provide anything of value whether the contribution, donation, transfer of funds,  
8 or thing of value, is to be made or provided directly, or through a conduit or  
9 intermediary.”<sup>2</sup> 11 C.F.R. § 300.2(m).

10 In this case, there is no information suggesting that Mr. McClintock solicited  
11 funds for Partnership for America. While it is true that he attended the same conference  
12 as Mr. Ding, the complaint only speculates that the two acted in concert or that Mr.  
13 McClintock solicited funds for Partnership for America at the conference. Also, the  
14 article attached to the complaint cited as support for this allegation states only that Mr.  
15 McClintock solicited for his campaign and Mr. Ding solicited for Partnership for  
16 America at the conference. Although the complaint alleges that Mr. Ding acted as Mr.  
17 McClintock’s agent in soliciting funds for Partnership for America, the McClintock  
18 committee stated in its response that it ceased using Mr. Ding’s services after April 9,  
19 2008, and that Mr. McClintock never solicited funds for Partnership for America.  
20 Therefore, based upon the information presented, there is no reason to believe that Tom  
21 McClintock violated 2 U.S.C. § 441i(e)(1)(A).

<sup>2</sup> Congress at 2 U.S.C. § 441i(e)(4) excepted: (1) general solicitations on behalf of 501(c) groups whose primary purpose is not certain types of “Federal election activity,” including voter registration within 120 days of a Federal election and voter identification, get-out-the-vote and generic campaign activity in proximity to a Federal election; and (2) specific solicitations limited to \$20,000 on behalf of 501(c) entities whose primary purpose is these certain types of “Federal election activity.” See AO 2005-10.